Grinnell Corporation *and* Glass, Molders, Pottery, Plastics & Allied Workers International Union, AFL–CIO, CLC[1] *and* Glass, Molders, Pottery, Plastics & Allied Workers International Union, Local No. 376, AFL–CIO, CLC. Cases 4–CA–16881 and 4–CA–17731

August 9, 1991

DECISION AND ORDER

BY MEMBERS CRACRAFT, OVIATT, AND RAUDABAUGH

Exceptions filed to the judge's decision[2] present the question, inter alia, whether the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to bargain in good faith with the Union regarding the implementation of job performance standards for the unit employees.

The Board has considered the exceptions in light of the record and briefs[3] and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this Decision and Order.

The judge found that the Respondent did not, as alleged, violate Section 8(a)(5) by refusing to bargain over the setting of employees' performance standards.[4] Based on his finding that the Respondent bargained in good faith, the judge concluded that the Respondent also did not violate the Act by making unilateral changes and by failing to reinstate economic strikers following the Union's request for reinstatement.[5] The judge therefore dismissed the complaint. Although we conclude that the record does not establish by a preponderance of the evidence that the Respondent failed to bargain in good faith regarding job performance standards, we reach this conclusion solely for the reasons set forth below, and we do not rely on the judge's analysis.

[1] Effective May 1, 1988, the Glass Pottery, Plastics & Allied Workers International Union, AFL–CIO merged with International Molders and Allied Workers Union, AFL–CIO to form the Glass, Molders, Pottery, Plastics & Allied Workers International Union, AFL–CIO, CLC. Accordingly, the caption has been amended to reflect the change.

[2] On July 13, 1989, Administrative Law Judge Stephen J. Gross issued the attached decision. The General Counsel filed exceptions and a supporting brief, the Respondent filed cross-exceptions and a brief in support thereof and in response to the General Counsel's exceptions, and the General Counsel filed a brief in response to the Respondent's cross-exceptions.

The National Labor Relations Board has delegated its authority in this case to a three-member panel.

[3] The Respondent has requested oral argument. The request is denied as the record, exceptions, and briefs adequately present the issues and the positions of the parties.

[4] No exceptions were filed to the judge's further findings that the Respondent also did not, as alleged, engage in bad-faith bargaining with respect to bonus programs and merit pay for the unit employees.

[5] The General Counsel has conceded that this additional conduct would violate the Act only if the Respondent engaged in bad-faith bargaining that prevented a valid bargaining impasse.

A. *Facts*

The Respondent manufactures malleable pipefittings at a facility in Columbia, Pennsylvania, that it acquired in February 1986. The Union and its predecessors have represented the production and maintenance employees at this facility since about 1944. On purchasing the Columbia plant, the Respondent assumed the most recent collective-bargaining agreement that was due to expire on October 10, 1987.[6] The parties began bargaining for a successor agreement on August 11. There were 27 bargaining sessions held between August 11 and the time that the Union established a picket line on October 22. The Union was represented during bargaining by its International representative, David Sumpman, and a committee of nine unit employees that included Local President Charles Benfer and Vice President Donald Bell. The Respondent was represented at the negotiations by its manager of personnel and industrial relations, Wayne Murphy, Plant Manager Doyne Chartrau, and its attorney, Charles Kelso.

At the time negotiations for a new contract began, the plant was organized into about 100 departments, with several hundred job classifications. About 60 percent of the unit employees were paid an hourly wage, and about 40 percent were incentive workers, paid on a pieces-per-hour incentive system.

At the first bargaining session, on August 11, the Respondent presented a bargaining proposal that, inter alia, eliminated incentive pay for the unit employees who had worked under that plan and also included substantial reductions in wages and benefits for all employees. During the next session, on August 18, Benfer asked whether, after the incentive workers became hourly workers, they would be required to maintain the same pace as hourly workers that they had maintained on the incentive scale. The Respondent answered that ''we did not expect them to work at the same level of effort [that they had as incentive workers], but if the company were to be successful we had to have them work as fast as we could and yet be a reasonable standard.''

The third bargaining session was held on September 1, during which the Respondent presented the Union with a complete contract proposal containing significant changes in the existing agreement. One of these changes concerned ''quality and quantity'' standards. Section 9.1 of the Respondent's proposed management-rights clause stated, as relevant here:

> 9.1 Except as expressly limited in this Agreement, the Company retains all the rights and functions of management, the exercise of which shall not be subject to arbitration. Without limiting the above statement, these rights include:

[6] All dates are in 1987 unless otherwise noted.

> (e) the determination of quality and quantity standards and judgment of workmanship required. The continued failure of an employee to produce on the basis of Company standards will be considered just cause for discipline up to and including discharge.

The Union objected to section 9.1(e) because it feared that the provision would prevent it from grieving adverse decisions by the Respondent. When the Union asked who would set the standards and whether there were any standards in existence, Murphy replied that the Respondent was going to determine the standards and that it was working on them, but that ''it could take months and months to get them.''

The Respondent's contract proposal also included another provision, section 16.4, which gave it the ''right to establish reasonable standards of performance in connection with work measurement systems.[7] The Union asked what the Respondent meant by work measurement systems. According to Sumpman, the Respondent replied that, ''They didn't have them. They didn't know what they would be except they wanted the right to put them in if and when they chose . . . .'' Benfer said that during this meeting Murphy told the Union that the Respondent planned to implement standards without bargaining, but that they did not have them yet.

The parties next discussed production standards at the seventh bargaining session on September 8. The Respondent told the Union at this session that under its proposed management-rights clause it had the right to establish ''production'' standards and that unit employees who failed to meet the Respondent's ''quality'' standards could be subject to discharge. The Union's vice president, Bell, asked whether the Respondent had set any ''performance standards.'' Murphy replied, ''no, that it may take a long time, years maybe.'' Chartrau explained that the standards they were developing ''would be just like all the other people that work on a flat rate.'' Bell then asked if the ''production standards'' were negotiable and Kelso said that they were not.

The Respondent informed the Union at the next bargaining session on September 9 that the reference to ''reasonable standards of performance'' in section 16.4 served to limit the scope of the Respondent's actions under section 9.1(e). According to the Respondent, this meant that if the Respondent disciplined an employee for failing to meet its ''performance standards,'' the Union could file a grievance and allow an arbitrator to decide whether the standard that the Respondent had implemented was reasonable. The Union, however, did not think that it could win a grievance based on the argument that the Respondent's standards were unreasonable. Sumpman told the Respondent that the Union was concerned about the lack of standards for the incentive workers, particularly because Murphy had said that they were nonnegotiable.

Standards were not specifically discussed again until the September 29 session. During that meeting, the Union asked the Respondent, ''If you didn't have any standards, why do you need the language in there.'' Chartrau replied that ''We do have standards and we need that language in there.'' On September 30, the Union informed the Respondent that it could not agree to the 9.1(e) and 16.4 proposals on standards because it had no idea what standards the Respondent planned to implement.

The parties again discussed this subject at the 21st bargaining session on October 8. The record evidence regarding this important meeting is confusing. It appears that at times during this meeting the Union thought that the Respondent was discussing employee ''performance standards'' that it intended to establish unilaterally as a basis for disciplining employees who failed to meet them, whereas the record suggests that the Respondent actually was referring to ''cost standards'' for various jobs which in at least some cases were already in existence and which had no impact on the unit employees' terms and conditions of employment.

The Union asked the Respondent for specific information about ''production standards.'' The Union explained to the Respondent that with 40 percent of the unit employees being converted from incentive to hourly pay under the Respondent's proposal, the Union anticipated questions from the former incentive employees about how much they would have to produce under an hourly pay system. The Union told the Respondent that it wanted to know what the standards were going to be and that it wanted to bargain about them.

The Respondent told the Union that it had some but not all of the ''production standards'' and that it was not going to negotiate those standards because there were too many of them. Chartrau stated that the Respondent had finished a couple of standards and that it had taken a couple of weeks to compile this data. He told the Union that the Respondent would have its head engineer explain the standards to the Union. The Union replied that the samples the Respondent offered would not be sufficient to alleviate its concerns about the production levels at which the Respondent ex-

[7] As initially proposed, sec. 16.4 stated in full that ''[i]n an effort to improve overall plant efficiency and to provide maximum opportunities for steady continuing employment the Union will cooperate with the Employer to improve methods and machinery within the plant for the purpose of reducing costs of labor and materials, including the Employer's right to establish reasonable standards of performance in connection with work measurement systems.'' The Respondent later proposed a nonsubstantive change in the language, so that the last part of the above-quoted language would read: ''for the purpose of reducing costs of labor and material. The Employer has the right to establish reasonable standards of performance in connection with work measurement systems.''

pected the incentive workers to produce as hourly employees. When Bell later asked to see the few samples that the Respondent had completed, Chartrau replied that the Respondent's officials did not have any standards with them at that time.

Chartrau's bargaining notes indicate that during this discussion he told the Union that there would be 33,200 different ''production standards'' and that the Respondent had completed 2600 of them. It appears that at this point Chartrau was referring to cost/scheduling standards because the Respondent later told the Union that it had never established ''a pieces per hour disciplinary standard'' for hourly employees and that it did not intend to set such a rate covering incentive workers either. Further, on several occasions, Chartrau said that the Respondent and the Union were talking about two separate things in discussing ''production standards.''

Sumpman's testimony shows the confusing state of the record.

> The company said they had different positions at different times. I do not deny at one point in time the company said they are cost standards. One time they said they are production standards.

Sumpman testified that during negotiations the ''disciplinary production standards'' that the Union sought to negotiate were referred to as ''production standards,'' and that ''at one point in time'' the Respondent said that it was ''looking at cost scheduling standards.'' Sumpman further testified that the Respondent said that it wanted the right to establish ''incentives or production standards'' and that it was working on developing them. Sumpman testified that he thought a production standard had to be either a pieces-per-hour number or some type of level at which an employee would be expected to perform. Sumpman further testified that the Respondent stated that there had never been ''pieces per hour disciplinary standards for flat rate employees'' and that the Respondent would not set a ''numerical disciplinary production standard'' for either incentive or flat rate employees, but instead would tell employees that they were expected to do ''a fair days [sic] work for a fair days [sic] pay.'' Sumpman testified that ''at one point during negotiations they became cost standards and not production standards.'' Sumpman testified that at one point ''later in the negotiations,'' Chartrau stated that ''we are talking about two different things,'' but that the Respondent's original position had to do with ''production standards,'' which according to Sumpman meant ''standards that would be used for disciplinary purposes.'' When Sumpman was asked during his testimony whether Chartrau ever confirmed that he was working on disciplinary standards, Sumpman testified:

> [Chartrau] did not use the word disciplinary, but the language said it to be production standards that maybe [sic] established that discipline would be issued if they weren't met. He didn't say I am looking for standards to fire people on. He said we are working on production standards at one point. That was in the beginning of negotiations. We don't know when we will have them. We are working on the [sic.] There are thousands of them and Mr. Kelso [said] they were not cost standards at that point. The cost standards crap came in at the end of the thing and I shouldn't use that expression, but somewhere down the road they became cost standards yes.

Additionally, the Respondent's attorney, Kelso, told the Union at the October 8 meeting that the Respondent intended to treat incentive workers the same as it had hourly employees. Kelso claimed that all the Respondent really wanted was ''a fair day's work for a fair day's pay.'' Local Vice President Bell then asked Kelso if the Respondent was using any particular formula for determining ''production standards.'' After Kelso said that it was not, the Union asked him why the Respondent wanted to implement these standards. Kelso replied that the Respondent wanted the right to discipline an employee who was not performing ''up to par,'' and that if an employee was ''not pulling his load we want to be able to establish a standard on him and get him to perform up to his capabilities.''

There was only one discussion of the standards proposed in section 9.1(e) after the collective-bargaining agreement expired on October 10. During a meeting on October 14, the Union again expressed its concern about ''production standards'' and whether an employee could be disciplined for failure to meet them. The Respondent showed the Union ''production standards'' for Tracy Good and Sam Huntoon, two hourly employees who served on the Union's negotiating committee. Neither employee had seen these standards before. Chartrau told the Union that these were ''cost standards'' which had been applied to hourly jobs for years. When the Union asked for copies of other standards, the Respondent said that it had 40,000 of these standards and that it would not give them all to the Union. The Respondent claimed that this information constituted its minimum ''production standards'' and that employees who knew them would be able to slacken their pace after they had reached the minimum.

On October 18, 1 week after the parties' collective-bargaining agreement expired, the Respondent refused to permit the unit employees to report for work unless they agreed to work in accordance with the terms of the Respondent's last contract offer. Most of the unit employees refused to work under these conditions. On October 22, the Union established a picket line at the Respondent's plant. The Respondent then hired re-

placement employees. It is undisputed that subsequent to this time the Respondent did not implement any new performance standards covering unit work. On November 14, 1988, the Union made an offer to the Respondent that the unit employees would return to work under the terms of the expired contract. The Respondent rejected the offer.

B. *Analysis and Conclusions*

In our view, the record does not establish that the Respondent failed to bargain in good faith about existing or proposed standards.[8] The record evidence discussed above shows that at the outset of the parties' negotiations the Respondent presented the Union with a proposed collective-bargaining agreement that under section 9.1(e) gave the Respondent the right unilaterally to establish performance/discipline standards for the unit employees, and that section 16.4 gave the Respondent the right unilaterally to establish ''reasonable standards of performance in connection with work measurement systems.'' Under these contract proposals, any unit employee who failed to meet such standards was subject to discipline up to and including discharge. The Respondent's authority on this subject was limited only by the right of a disciplined employee to file a grievance regarding the ''reasonableness'' under section 16.4 of the performance/disciplinary standard that the Respondent had applied. Later in the negotiations, at least by October 8, the Respondent began referring to cost/scheduling standards that the Respondent used to determine the cost per unit, including employees' wages and benefits, materials, and overhead, of performing a specified production step.

Regarding the Respondent's alleged failure to bargain in good faith over existing performance standards,[9] the evidence establishes that at the time the parties engaged in bargaining the Respondent did not have any performance/discipline standards covering the unit employees. Although there were cost/scheduling standards in existence covering jobs performed by the unit employees, it is undisputed that the Respondent had never employed these standards in the manner that it proposed to employ performance/discipline standards under section 9.1(e), i.e., to impose employee discipline. Also, there is no evidence that the Respondent planned to use its existing cost/scheduling standards as a basis for disciplining unit employees. We therefore find that the Respondent's existing cost/scheduling standards are not mandatory subjects of bargaining because the record does not establish that they have or were going to have a material or significant effect on the unit employees' terms and conditions of employment.[10] In so concluding, we stress that the two examples of existing production standards the Respondent offered, involving hourly employees Tracy Good and Sam Huntoon, clearly were cost/scheduling standards and not performance/discipline standards. It is noteworthy that although the standards for Good's and Huntoon's jobs had been in existence for years, neither employee was even aware of the standards' existence, nor had their performance ever been evaluated in accordance with these standards. Thus, these cost/scheduling standards apparently were standards utilized by the Respondent to schedule work and determine costs of manufacturing. Moreover, there has been no showing in this case that these examples were different in kind from the 2600 other cost/scheduling standards the Respondent said that it possessed. Thus, because the evidence is that the only standards for hourly jobs that the Respondent had in existence at the time of the parties' contract negotiations were cost/scheduling standards which we have found are not mandatory subjects of bargaining, we conclude that the Respondent has not violated Section 8(a)(5) of the Act by refusing to bargain concerning existing performance standards.[11]

Regarding the Respondent's alleged failure to bargain in good faith about proposed performance/discipline standards, we find that the record does not establish that the Respondent was in the process of establishing preset, numerical performance/discipline standards covering the unit employees. Thus, we conclude that the Respondent has not been shown to have unlawfully refused to provide the Union with information concerning factors assertedly being considered in the development and establishment of preset, numerical performance/discipline standards covering the unit employees.

Although the parties' negotiations on the subject of ''standards'' were confusing to both sides, we find that

[8] In reaching this conclusion, as indicated previously, we do not rely on the judge's analysis. We do, however, note that (as the General Counsel pointed out in his exceptions) the judge erroneously concluded that he would have had to first find that the Respondent generally engaged in bad-faith bargaining during the negotiations before he could find that it violated Sec. 8(a)(5) by its bargaining conduct with respect to any particular subject, such as the issue regarding job-performance standards raised here. Although the Board can indeed find bad-faith bargaining based on the totality of the circumstances, see, e.g., *Reichhold Chemicals*, 288 NLRB 69 (1988), and *Houston County Electrical Cooperative*, 285 NLRB 1213 (1987), the Board can also find bad-faith bargaining on the basis of a party's failure to bargain in good faith over a single mandatory subject of bargaining. See, e.g., *Rocky Mountain Hospital*, 289 NLRB 1347 (1988); *San Isabel Electric Services*, 225 NLRB 1073, 1078, 1080 (1976).

[9] Although the judge found that the complaint did not encompass this allegation, we agree with the General Counsel that the complaint, which alleges generally that the Respondent refused to ''negotiate with respect . . . employee performance standards,'' is sufficiently broad to raise this issue.

[10] See, e.g., *Allied Chemical Workers v. Pittsburgh Glass*, 404 U.S. 157, 178–179 (1971); and *United Technologies Corp.*, 274 NLRB 1069, 1070 (1985), and cases cited therein.

[11] The Board's finding in *Master Slack*, 230 NLRB 1054, 1055, 1066–1067 (1977), enfd. 618 F.2d 6 (6th Cir. 1980), that the ''production rates and quotas'' in that case were mandatory subjects of bargaining, does not require the same result with regard to the cost/scheduling standards in the instant case. In *Master Slack*, the production rates and quotas were shown to have had a material and significant effect on rates of pay, whereas in the instant case the cost/scheduling standards were not shown to have had such an effect.

the Respondent ultimately made it reasonably clear to the Union that it was not in the process of developing performance/discipline standards and that employees formerly receiving incentive pay would be treated the same as hourly workers. During the negotiations the Respondent repeatedly told the Union that what it really wanted from the unit employees was ''a fair day's work for a fair day's pay.'' Further, the Respondent told the Union during negotiations that it planned to treat the former incentive workers, who composed 40 percent of the unit employees and whose status as hourly workers under performance/discipline standards was the Union's principal concern here, no differently than it had treated hourly employees in the past. It is undisputed that the Respondent never had disciplined an hourly employee for failing to meet its cost/scheduling production standards.

For the above reasons, we find that the General Counsel has failed to establish by a preponderance of the evidence that the Respondent has violated the Act as alleged in this case.[12] Accordingly, we shall dismiss the instant complaint.

ORDER

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

[12] In so doing, we note the apparent confusion on the part of the parties during negotiations about what each other was referring to in regards to ''standards,'' the continued confusion of the witnesses and the attorneys as the evidence on this subject was introduced during the hearing, and the resultant confused state of the record evidence in this regard. Although it appears that often the parties were talking about two different standards, the record fails to establish that the Respondent deliberately miscommunicated or attempted to mislead the Union's negotiators.

Because there is no evidence that subsequent to the bargaining impasse the Respondent implemented any preset, numerical performance/discipline standards, we find it unnecessary to decide whether the Respondent would have violated the Act under Board's decision in *Colorado-Ute Electric Assn.*, 295 NLRB 607 (1989), if it had implemented such standards.

William Slack, Jr. and *Barabra O'Neill, Esqs.*, for the General Counsel.

Charles Kelso, Michael C. Towers, and *David Kresser, Esqs. (Fisher & Phillips)*, of Atlanta, Georgia, for the Respondent.

David M. Cook, Esq. (Kircher & Phalen), of Cincinnati, Ohio, for the Charging Parties.

DECISION

I. INTRODUCTION

STEPHEN J. GROSS, Administrative Law Judge. This proceeding[1] concerns Grinnell Corporation's Columbia, Pennsylvania plant,[2] most of the employees of that plant,[3] and the union that represents them, Local 376 of the Glass, Molders, Pottery, Plastics and Allied Workers Union.[4]

In mid-August 1987 Grinnell and the Union began bargaining about a new agreement, since the then-current agreement expired by its own terms on October 10.[5] (All events that this decision refers to occurred in 1987 unless otherwise specified.) From the start of the bargaining it was clear that Grinnell wanted terms very different from those in the about-to-expire contract. Under the Company's proposals, everything from wages to washup time would have been changed in ways contrary to the employees' desires.

The employees were outraged by the changes that Grinnell proposed, and twice voted to reject Grinnell's proposed collective-bargaining contract, urging instead that the terms of the old collective-bargaining contract remain in force while bargaining continued. But beginning on October 18, a week after the old agreement expired, Grinnell refused to permit employees to come to work unless they were willing to work in accordance with the terms of the Company's latest offer. Most of the employees refused to work under those terms, and on October 22 Local 376 established a picket line at the Columbia plant. Grinnell responded by hiring replacement employees. (The striking employees have since offered to return to work. But that offer is conditioned on Grinnell reinstituting the pre-October 18 terms of employment.)

The General Counsel alleges that in the course of the bargaining between August and October, Grinnell violated by Section 8(a)(5) of the Act by ''refusing to negotiate with respect to merit pay, a bonus plan, and employee production standards.'' The General Counsel further contends that if—but only if—Grinnell did violate the Act in those respects: (1) the Company's imposition of new terms and conditions of employment on October 18 violated the Act; and (2) Grinnell's failure to reinstate the strikers violated the Act.

In sum, this case hinges on whether Grinnell's dealings with the Union about merit pay, bonus plans, and employee production standards violated Section 8(a)(5) of the Act.

For better or for worse, the National Labor Relations Act precludes the Board from deciding matters such as these on the basis of whether Grinnell's proposals or bargaining style seem to the Board to be reasonable or hardhearted, fair or onerous, conciliatory or abrupt. ''The Board is not permitted . . . to require the employer to contract in a way which the Board deems proper.'' *Commercial Candy Vending Division*, 294 NLRB 908 (1989) (hereafter *Commercial Candy*); see

[1] The charge in Case 4–CA–16881 was filed by the International Molders and Allied Workers Union, AFL–CIO Union on October 13, 1987. The charge in Case 4–CA–17731 was filed by Local 376 on November 21, 1988. A consolidated complaint based upon both charges issued on February 28, 1989. (In the 16-month interim between the filing of the first charge and the issuance of the complaint, the Division of Advice advised the Regional Director of Region 4, in April 1988, that the October 1987 charge should be dismissed, an appeal was taken, and the Office of Appeals concluded that a complaint should issue.) I heard the case in Lancaster, Pennsylvania, on April 3, 4, and 5, 1989. The General Counsel, the Union, and Grinnell have filed briefs.

[2] Grinnell admits that it is an employer engaged in commerce for purposes of the National Labor Relations Act (the Act).

[3] All production and maintenance employees of Grinnell at its Columbia plant, including weighmaster, shipping department employees, warehousemen, group leaders, plant janitors, but excluding patternmakers and their apprentices, watchmen, gardener, laboratory technicians, time and motion study employees, office janitress, office clerical employees, storeskeeper and supervisory staff. There are about 750 employees in that unit.

[4] Grinnell admits that Local 376 is a labor organization within the meaning of the Act. The International Molders and Allied Workers Union merged with the Glass, Pottery, Plastics and Allied Workers International Union on May 1, 1988. Grinnell's answer admits that the Company continued to recognize Local 376 as the representative for employees at its Columbia, Pennsylvania plant following the merger.

[5] Representatives of both the International Union and Local 376 bargained on behalf of the employees. The word Union, as used in this decision, refers collectively to both the International and the Local.

NLRB v. Insurance Agents, 361 U.S. 477, 487 (1960); *NLRB v. American National Insurance Co*. 343 U.S. 395 (1952). Rather, the Board is empowered only to determine whether Grinnell failed to bargain ''in good faith.'' And having considered the evidence in light of the standards set by the Board for evaluating an employer's bargaining, my conclusion is that Grinnell, when bargaining about performance standards, bonus programs and merit pay, did so in good faith. That, in turn, means that Grinnell did not violate the Act when it implemented new terms of employment on October 18, nor did it when it refused to reinstate strikers.

I accordingly will recommend that the Board dismiss the complaint against Grinnell.

II. AN OVERVIEW OF THE BARGAINING

Meetings between Grinnell and the Union began on August 11. On that day, and at the second and third meetings, on August 18 and September 1, Grinnell presented contract proposals that would have changed virtually every provision of the then-existing collective-bargaining contract, with the changes uniformly contrary to the desires of the Union and the employees. Just by way of example: wages would have been reduced by an average of about $3 an hour; holidays cut back; incentive pay (applicable to 40 percent of the work force) eliminated; seniority made irrelevant to promotions, job transfers, layoffs and recalls; overtime pay reduced; time allowed on paid breaks reduced; paid washup time eliminated; medical and dental benefits curtailed; the number of shop stewards cut back; grievance procedures revised; a broad management rights clause added to the contract; and the probationary period for new employees increased from 42 to 180 days.

Representatives of Grinnell and the Union met an additional 24 times prior to the strike. (They continued to meet after the strike got under way. But it is the period prior to the strike that concerns us here.) During that period Grinnell eased many of its demands. Thus—again by way of example only—relative to its initial proposal Grinnell increased its proposed wage rates, increased the number of holidays it would grant employees, increased the number of shop stewards it would permit, decreased the proposed probationary period, and agreed to take seniority into account, with other factors, on matters such as layoffs and promotions. Moreover Grinnell offered to open its books and records to inspection by the Local 376.

A key factor in evaluating an employer's bargaining is whether the employer showed an interest in arriving at agreement with the union or was in reality trying to avoid agreement. *Reichhold Chemicals*, 288 NLRB 69 (1988) (*Reichhold II*); *Commercial Candy*, supra at 910. And although, from the vantage point of the employees and their union, Grinnell's initial proposals were grim indeed, the Company's willingness to back off some of its demands does suggest a desire to obtain the Union's agreement to a contract. Moreover no one claims that Grinnell tried to sabotage the bargaining with tactics like refusing to meet reasonably frequently, insisting on inconvenient times or places for meetings, bypassing Local 376, failing to designate representatives with sufficient bargaining authority, withdrawing already agreed-upon provisions, having its bargaining representatives utter coercive statements, or, away from the bargaining table, violating its employees' Section 7 rights. See, e.g., *Hotel Roanoke*, 293 NLRB 182 (1989); *Atlanta Hilton & Towers*, 271 NLRB 1600, 1603 (1984).

Finally, ''Respondent did not seek to create a situation where the Union would have no voice whatsoever concerning any facet of the employment relationship.'' *Reichhold II*, supra at 71.

The General Counsel claims, as indicated earlier, that Grinnell refused to bargain in good faith about three specific facets of the Company's proposed collective-bargaining agreement. But in light of cases like *Reichhold II* and *Commercial Candy*, it is hard to conceive of circumstances in which an employer could be said to have bargained in good faith over all but three provisions of a proposed collective-bargaining contract but failed to bargain in good faith over the remaining three. Since the General Counsel does not claim that, on an overall basis, Grinnell bargained in bad faith, and given the facts outlined above, perhaps this decision should end right here.

Nonetheless, the next parts of this decision consider Grinnell's behavior at the bargaining table in regard to performance standards, bonus programs, and merit pay.

III. PERFORMANCE STANDARDS

The Proposed Contract Provisions At Issue

On September 1 Grinnell delivered a proposed collective-bargaining contract to the Union. Section 9.1(e) read:

> Except as expressly limited in this Agreement, the Company retains all the rights and functions of management, the exercise of which shall not be subject to arbitration. Without limiting the above statement, these rights include:
>
> . . . .
>
> The determination of quality and quantity standards and judgment of workmanship required. The continued failure of an employee to produce on the basis of Company standards will be considered just cause for discipline up to and including discharge.

In addition, another provision, section 16.4, provided that Grinnell had the ''right to establish reasonable standards of performance in connection with work measurement systems.''[6]

The General Counsel's Contentions

The complaint alleges that Grinnell failed to bargain in good faith about, among other things, ''employee production standards.'' On brief the General Counsel argues that Grinnell violated the Act by: (1) ''insisting upon a proposal which excluded the Union from any effective role in the creation of performance standards''; (2) ''failing to bargain in

[6] Sec.16.4 read, in full: ''In an effort to improve overall plant efficiency and to provide maximum opportunities for steady continuing employment the Union will cooperate with the Employer to improve methods and machinery within the plant for the purpose of reducing costs of labor and materials, including the Employer's right to establish reasonable standards of performance in connection with work measurement systems.'' Grinnell later proposed a nonsubstantive change in the language, so that the last part of the above-quoted language would read, ''[f]or the purpose of reducing costs of labor and material. The Employer has the right to establish reasonable standards of performance in connection with work measurement systems.''

good faith over the proposal; and (3) ''refusing Union requests to negotiate over existing performance standards.''

How the Parties Read Proposed Sections 9.1(e) and 16.4

Early in the bargaining, Grinnell's representatives told the Union that section 16.4—with its reference to ''reasonable standards of performance''—limited the scope of the Company's actions under section 9.1(e). Thus, said the Company, if Grinnell disciplined an employee for failing to meet ''Company standards,'' the Union could grieve, and an arbitrator would then determine whether the standards against which Grinnell measured the employee were ''reasonable'' ones.

The Union did not dispute that interpretation.[7]

The Bargaining Over Performance Standards, in General

The parties touched on Grinnell's performance standards proposal on August 18 and September, 1 and discussed it at some length on September 9. On September 28, the Union proposed modifications to section 9.1(e). A day later Grinnell rejected the Union's proposal. Then, on October 8, the parties spent hours discussing the Company's performance standards proposal. More discussion followed on October 9 and October 14. (The parties continued to discuss the subject after the strike. But those discussions are not at issue here.)

Throughout those discussions, Grinnell's representatives listened to what the Union representatives had to say, replied to the Union's arguments, and earnestly tried to convince the Union representatives that the Company's proposal was not damaging to the employees or the Union.[8]

But notwithstanding that kind of behavior, which ordinarily unequivocally spells out ''good faith,'' some facets of the Company's bargaining merit a close look.

Evidence of Grinnell's Bad Faith

The Union's main worry was about how an arbitrator would measure reasonableness when evaluating disciplinary action by Grinnell against an employee for failing to meet Company standards. The question was especially troubling, opined the Union, regarding jobs that were subject to incentive pay under the then about-to-expire contract but which, under Grinnell's proposed collective-bargaining agreement, would become flat rate jobs. And the Company's insistence that the number of employee classifications be drastically reduced further exacerbated the matter. For example, what if: (1) a particular job had been previously done by an employee getting incentive pay and who, because of that pay system, worked extraordinarily hard; (2) Grinnell were to move into that job an employee who had never done it before (as the Company easily could under its proposed classification system); (3) Grinnell subsequently fired the employee on the ground that he or she failed to ''produce on the basis of Company standards''; and (4) the Union grieved. Mightn't the arbitrator, worried the Union, determine the reasonableness of Grinnell's standards on the basis of the exceedingly high output of the previous incentive-pay employee.

On the face of it, the parties could have dealt with the Union's concerns by including in the proposed collective-bargaining agreement a definition of ''reasonable'' for purposes of section 16.4. But neither the Union nor Grinnell proposed that. Rather, the Union decided that because of such concerns it needed to participate in the ''determination of quality and quantity standards'' (in the language of sec. 9.1(e)). In the very least, argued the Union, it needed more information about the kinds of standards the Company had in mind.

Grinnell, however, adamantly insisted that the Union agree to the language of the Company's proposal, under which the Union would waive the right to so participate. That insistence on Grinnell's part is not itself evidence of bad faith. But in the course of that insistence, Grinnell refused to provide the Union with any information about the standards it planned to adopt; refused to provide any information about the standards that were already in being; and argued that the standards were ''irrelevant'' to the employees but then would not explain why, if that were so, it needed the provision.

Refusal to provide information about proposed standards. When the Union asked what kind of standards Grinnell had in mind, Grinnell's representatives said that the Company wanted to be able to insist that the Company get ''a fair day's work for a fair day's pay.'' When the Union asked for something more specific than that, Grinnell's response was on the order of, ''we wouldn't begin to attempt to define that.''

That kind of response was no real response at all, given the fact that the proposed contract provided that employees could be disciplined for failing to meet ''Company standards.'' Moreover no matter how the Union attempted to get some information about the standards that section 9.1(e) referred to, it could get no useful response. Thus when a Union representative asked ''what measurement system are you going to use,'' a Grinnell representative responded that the Company had not selected ''any one system.''

Grinnell, that is, insisted on a contract provision that explicitly gave it the right to unilaterally adopt quality and quantity standards, which standards would be used for disciplinary purposes, and, at the same time, refused to give the Union a clue about what kind of standards the Company planned to install.[9]

Refusal to provide information about existing standards. At the October 8 bargaining session, Grinnell advised the Union that of the tens of thousands of standards that would ultimately be needed, 2600 were already in existence. The Union promptly asked to see what they looked like. Grinnell

[7] On brief, the Union does claim that its bargaining representatives were dubious about the arbitrability of disciplinary action under sec. 9.1(e). But the record shows otherwise. Moreover at no time did the Union propose language changes designed to ensure that arbitrators would measure ''Company standards'' against a criterion of ''reasonableness.''

[8] Grinnell called no witnesses. This evaluation of the bargaining table behavior of Grinnell's bargaining representatives is based on testimony of some of the Union's bargaining representatives and on the notes of the bargaining sessions that have admitted into the record as exhibits.

[9] Anytime a supervisor anywhere accuses an employee of not getting enough work done, or of below-par quality, the supervisor is thereby applying some set of standards—whether or not the supervisor recognizes that to be the case. And those standards may be exceedingly complex, taking into account factors such as the idiosyncrasies of the particular machinery the employee is working with, the employee's past record, the interplay of quantity and quality, and the varying working conditions in the plant. On brief Grinnell alludes to all this. But the difference between most industrial situations and the one at hand is that Grinnell has opted to seek explicit waiver by Local 376 of any right to participate in the formulation of such standards.

refused, saying that the standards were ''irrelevant.'' Ultimately the Company showed the union representatives 2 of the 2600 standards.

Failure to explain why the Company needed the provisions. As just indicated, at one point Grinnell argued that the standards to which section 9.1(e) referred were ''irrelevant.'' But if that were true, then Grinnell should have responded favorably to the Union's proposal that the offending language be deleted. Grinnell did not, instead insisting on retention of such language.

Performance Standards—Conclusion

The question is whether an employer that insists on union agreement to a contract provision giving the employer the right to unilaterally adopt standards pursuant to which employees may be disciplined may ever lawfully: (1) refuse to give the union any hint about the nature of the proposed standards; (2) refuse to show the union existing standards (except for a token few); and (3) claim that the standards are irrelevant to the union's concerns yet fail to explain why, if that is so, the employer considered union agreement to the provision to be essential.

Perhaps the answer should be ''no.'' Cf. *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149 (1956). If so, Grinnell violated Section 8(a)(5). But as I understand the meaning to be ascribed to Section 8(a)(5), one must consider the employer's bargaining in its entirety, including conduct of that sort. And if that course is followed, my conclusion is that Grinnell's bargaining about performance standards did not violate the Act.

First, the contract language at issue certainly is not so onerous as to virtually force a union to reject it. Under it, Grinnell can fire employees, or discipline them in lesser ways, if Grinnell believes that their production is below its standards. But under the Company's proposal, the standards that Grinnell adopts must be ''reasonable.'' Thus any time Grinnell does discipline an employee for below-par production, Local 376 can grieve, in which case Grinnell has to convince an arbitrator that the standard it used was in fact ''reasonable.''

Secondly, as discussed already, in respect to other provisions of the proposed collective-bargaining agreement, Grinnell backed off a number of its demands, sometimes accepting changes proposed by the Union. And in respect to sections 9.1(e) and 16.4, as also previously discussed, Grinnell's representatives engaged in lengthy discussions about them with the Union, listened to what the union representatives had to say, and tried hard to convince the Union that the Union should not let those provisions stand in the way of an agreement.

In sum, if one focuses solely on Grinnell's stance concerning performance standards, then Grinnell did ''demonstrate an unyielding rigidity during negotiations'' that ''rendered collective bargaining'' of that facet of the proposed contract ''a futility.'' *Commercial Candy*, supra at 908. But certainly that is not true of Grinnell's bargaining taken as a whole. And even focusing just on sections 9.1(e) and 16.4, the record fails to show that Grinnell took the positions it did ''in order to frustrate agreement on a contract.'' Id at 910. In fact the reverse is true. The evidence before me shows that Grinnell tried hard to convince the Union to accept the provisions.

There remains, however, one last matter to consider regarding Grinnell's bargaining about performance standards: namely, the fact that Grinnell refused to bargain about existing performance standards.

Grinnell's Refusal to Bargain About Existing Performance Standards

Grinnell admitted to having in place about 2600 separate standards for evaluating employee performance. The Union wanted to bargain about them. Grinnell refused. The General Counsel's brief claims that ''[s]ince performance standards are a mandatory subject of bargaining, Respondent had an obligation to bargain with the Union about these standards.'' Brief at 62.

That claim raises troubling issues. Obviously to whatever extent those 2600 standards affect Grinnell's employees, they are mandatory subjects of bargaining. And Grinnell did refuse to bargain about them. But the question is whether, given the nature of the complaint and the contents of the record, the General Counsel has shown that Grinnell thereby violated the Act.

The complaint. The whole thrust of the complaint and of the General Counsel's evidence is that Grinnell refused to bargain in good faith about a new collective-bargaining contract. If the General Counsel is arguing that, apart from issues concerning the new collective-bargaining contract, Local 376 was entitled to bargain about performance standards, then, in my view, the claim is outside the scope of the complaint.

Moreover the record indicates that the Union wanted to bargain about the performance standards only because of Grinnell's proposed section 9.1(e).

Were the standards mandatory subjects of bargaining. The record does not tell us how Grinnell planned to use those 2600 standards absent a collective-bargaining contract provision on the order of section 9.1(e). (That absence of information, in fact, again shows that the focus of the case is on the bargaining over the terms of a new collective-bargaining agreement.) What the record does tell us is that until Grinnell raised the matter with its proposed contract language: (1) no employee even knew about Grinnell's performance standards; and (2) no Grinnell employee has ever been disciplined for failing to measure up to company-imposed standards.

Under these circumstances I can only conclude that there has been no showing that, absent Grinnell's proposed contract provisions, those 2600 standards are mandatory subjects of bargaining.

IV. BONUS PROGRAMS

The proposed collective-bargaining contract that Grinnell gave to the Union on September 1 included a provision, section 17.3, that dealt with ''bonus programs.'' Section 17.3 read:

> The employer may from time to time establish, modify and abolish production bonus programs to give employees added motivation to improve quantity and quality of production; provided, however all employees shall be a guaranteed an hourly wage rate not lower than $1.50 per hour below the rates shown on the wage supplement and further provided that all employees on such programs, considered as a group, shall average over

each year not less than the rates shown on the wage schedule.

That, it is fair to say, was an extraordinary provision. Under it Grinnell could have unilaterally: (1) given bonuses of any amount to any employees it chose; and (2) reduced the wages of other employees by as much as $1.50 an hour below contract wage levels (subject only to maintaining a specified average wage level).

During the first month or so of bargaining, Grinnell, in response to Union objections, insisted on retention of the provision; declined to indicate what sort of ''bonus programs'' it had in mind; made it clear that the Company would not consider revising the provision to require bargaining with Local 376 over the establishment of any given bonus programs or ''wage dips''; and similarly refused to consider having its decisions to set up bonus programs or institute wage dips subject to arbitration.

But in mid-October Grinnell changed the language of section 17.3. As revised, it: (1) eliminated Grinnell's right to impose any wage dip; (2) specified that Grinnell would ''discuss'' any proposed bonus plan with Local 376 prior to its implementation; and (3) made Grinnell's bonus-plan action subject, to some limited extent, to grievance machinery. In bargaining about the provision, moreover, Grinnell became more specific about the kinds of bonuses it had in mind. As revised, section 17.3 read:

> The employer may from time to time establish, modify and abolish production bonus programs to give employees added motivation to improve quantity and quality of production. The establishment of such plans shall be discussed with the Union prior to their implementation. Any failure of the Employer to live up to the terms of such Bonus Plan shall be subject to the Grievance procedure.

''Discuss,'' in turn, meant that Grinnell would: present proposed bonus programs to Local 376 for its consideration; listen to anything the union had to say about them; and modify the proposed programs in keeping with Local 376's views if, but only if, the Company liked the union's suggestions.[10]

As for the nature of the bonuses, once the $1.50 dip was deleted from the proposal, Grinnell's representatives told their union counterparts that the bonuses that the Company had in mind were relatively modest prizes, such as trips to Hawaii, savings bonds, small amounts of cash, or the like.

The Union, in response to Grinnell's position, proposed that while the Company retain the right to unilaterally implement a bonus program, Local 376 would thereafter have the right to ''negotiate'' with Grinnell about the program and the right to grieve if no agreement were reached. Grinnell flatly rejected the Union's proposal. In fact throughout the bargaining Grinnell's representatives refused to consider even the possibility of allowing Local 376 either to ''bargain'' about (as opposed to ''discuss'') or arbitrate any bonus programs that Grinnell might want to institute.

Grinnell's Bargaining About its Proposed Bonus Program Provisions—Conclusion

The nature of a contract proposal can be evidence of bad faith if the employer makes agreement by the union to it a predicate to the employer's willingness to enter into a collective-bargaining contract. But as touched on above, for that to be so, the demand for the provision must be ''clearly designed to frustrate agreement on a collective-bargaining contract''[11] or to ''undermine the union's representative status.''[12]

Grinnell did insist on the Union's agreement to section 17.3. Moreover as the General Counsel and the Union point out, even as revised, the provision entitled Grinnell to reward employees of Grinnell's own choosing in such amounts and at such times as it, in its sole discretion, decided upon.

But a provision of that nature does not equate to proof of bad faith. *Colorado-Ute Electric Assn.*, 295 NLRB 607 (1989); *Houston County Electric Cooperative*, 285 NLRB 1213 (1987); cf. *Toledo Blade Co.*, 295 NLRB 626 (1989).

As for the nature of Grinnell's bargaining, on the one hand it is clear that the Company's representatives at all times held a fixed intention to include in the new collective-bargaining contract a provision giving Grinnell the unilateral right to pay bonuses to employees of its own choosing. On the other hand, Grinnell substantially revised its proposed bonus program provision in ways that made it less onerous to the Union. And, as in the case of the performance standards provisions, Grinnell listened to what the Union had to say, responded to the Union's arguments, and did try to convince the Union to accept the provision.

In light of those facts I cannot conclude that Grinnell bargained in bad faith about section 17.3.

V. MERIT PAY

The proposed collective-bargaining agreement that Grinnell presented at the September 1 bargaining session included a provision, section 17.4, that would have entitled it to pay ''merit wage supplements'' of between one cent and 25 cents an hour. The provision read:

> The Employer may award merit wage supplements in which not more than one-third of the employees in any department may participate. The merit supplements shall not exceed $.25 per hour and shall be based on supervisory evaluations of employees' skill, performance and work record.

On October 11 Grinnell amended its proposal to provide for merit pay of up to 50 cents an hour, instead of the previous 25 cents an hour.

The discussions about merit pay were much the same as about the proposed bonus programs. Grinnell and the Union

[10] The General Counsel correctly points out that a willingness to ''discuss'' is not necessarily the same as an acceptance of the duty to bargain. For example, the duty to bargain carries with it the duty to do so in good faith. It is not entirely clear that the ''discuss'' requirement would have bound Grinnell to a similar obligation. But until this past May, Grinnell had good reason to believe that, had the contract required Grinnell to bargain with the Union prior to implementing bonus plans, the Act would have precluded Grinnell from putting such plans into effect during the term of the contract over the objections of the Union, even if Grinnell had bargained in good faith and the parties had reached impasse. See *Speedrack, Inc.*, 293 NLRB 1054 (1989). Thus Grinnell claimed, during contract negotiations, that had it agreed to bargain with Local 376 about the implementation of bonus plans, it would have thereby been giving the union what Grinnell called ''veto power.''

[11] *Reichhold II.* Accord: *Commercial Candy*.

[12] *River City Mechanical*, 289 NLRB 1503, 1504 (1988).

talked about section 17.4 at about a half-dozen sessions. Grinnell unrelentingly insisted on a provision that would give the Company virtually complete discretion to choose how many employees were to get merit pay (within the one-third-of-the-work-force limitation), how much they were to get (within the 50-cent-per-hour constraint), and the length of the period in which employees who were awarded merit pay would continue to receive it. As for which employees would receive merit awards, that would depend on supervisory ratings which, to some extent, would be subjective. Thus Grinnell would make merit awards without bargaining with the Union, and the Union would have only a limited right to go to arbitration about such awards.[13] The Union, on its part, flatly opposed any sort of merit pay.

Grinnell did back off its position in one respect. As orignally proposed, Grinnell would have based its merit pay decisions entirely on ''skill, performance and work record,'' with ''work record'' not including the length of time an employee had been with the Company. When Grinnell agreed to take seniority into account for matters such as layoffs and recalls (see part II, above), the Company also agreed to take it into account when deciding which employees should receive merit pay.

As with the proposed bonus programs, Grinnell was within its rights in insisting on a provision that would have given it the discretion to award merit pay. E.g., *Colorado-Ute Electric Assn.*, above.[14] And there was nothing about the manner in which Grinnell bargained about section 17.4 that suggested bad faith.

VI. PERFORMANCE STANDARDS, BONUS PLANS, AND MERIT PAY—CONCLUSION

The provisions at issue would have entitled Grinnell to unilaterally: (1) adopt performance standards that could form the basis for employee discipline,—with such standards subject, however, to a reasonableness criterion and to testing via the grievance machinery; (2) implement bonus programs; and (3) implement merit programs providing up to 50 cents per hour, with selection based on supervisory evaluations. While provisions of that nature may well be distasteful to the Union and to the employees, they are not intrinsically union-busting nor need they stand in the way of an agreement.

There is, however, something special about the case at hand. That is, those provisions were included in a proposed agreement that in term after term made changes that adversely affected both the employees' compensation and conditions of employment and the Union's status. I will assume, for present purposes, that a proposed contract provision that would normally be unobjectionable (so far as the Act is concerned) might be an indication of an employer's bad faith when included in a proposed collective-bargaining agreement as upsetting to the employees and the Union as was Grinnell's.

But even taking this consideration into account, I cannot conclude that the provisions themselves, nor the way Grinnell bargained about them, evidences bad faith on the Company's part. Grinnell, clearly, believed that it was bargaining from a position of strength and could accordingly obtain the Union's consent to a contract almost entirely to the Company's liking. The Act does not require Grinnell to behave as though that were not the case. See *NLRB v. American National Insurance Co.*, 343 U.S. at 404; *Teamsters Local 705 (Kankakee-Iroquois)*, 274 NLRB 1176 (1985), enfd. sub nom. *Kankakee-Iroquois County Employers Assn. v. NLRB*, 825 F.2d 1091 (7th Cir. 1987). And Grinnell's bargaining about the provisions in question did no more than reflect its view about which party, this time around, was in a position to get what it wanted. Since the terms that Grinnell wanted were not unlawful, and since Grinnell did not aim at undermining the status of Local 376 as representative of the members of the bargaining unit, Grinnell's bargaining did not violate the Act.

VII. OTHER MATTERS

Paragraph 9 of the complaint reflects the fact that, as Grinnell admits and as noted earlier, on October 18 the Company put into place all of the terms of the contract that, one day earlier, the members of Local 376 had voted to reject. If the parties were at an impasse on October 17, then Grinnell was free to implement most of the provisions of its proposed collective-bargaining agreement. If they were not then, of course, Grinnell's implementation of its proposed contract terms violated the Act.[15]

The General Counsel concedes that an impasse did exist unless the Board concludes that Grinnell refused to bargain collectively about the proposed provisions covering performance standards, bonus programs, or merit pay. (See R. Exh. 1 and the discussion at Tr. 5–6.) Since my conclusion is that Grinnell did not refuse to bargain about those provisions, I also conclude that Grinnell did not violate the Act when it implemented the contract terms.

One last matter remains for consideration. Because the Union did not agree to the collective-bargaining contract that Grinnell proposed, Local 376 did not waive its rights to bargain about such matters as the payment of bonuses or merit pay to unit employees. *Colorado-Ute*, supra at 610. And the complaint can be read as alleging that Grinnell has unilaterally made such payments.

But apart from a brief reference to a ''corporate-wide slogan contest,'' the record says nothing about whether Grinnell has in fact made any bonus payments or merit awards to unit employees (or, if Grinnell did, whether the Company did so without first bargaining with Local 376). Thus, to whatever extent the complaint can be read as alleging such unilateral action, I find that the evidence does not support the allegation.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[16]

[13] According to Grinnell, employees could grieve over their failure to get merit pay. But those grievances would be limited to showing that, based on supervisory evaluations, their performance was higher than employees who were getting merit pay.

[14] In that case, the Board upheld the right of an employer to insist on a provision that included no constraints at all on the amount of merit awards. (The provision read: ''The merit increase program will provide employees the opportunity of receiving additional increases based on their individual performance and contribution on the job. The amount and frequency of such merit increase will be determined by the Division Head and President and will not be subject to the grievance procedure.'' (295 NLRB 607, supra.))

[15] Thus par. 9 of the complaint also alleges that Grinnell implemented the new terms ''without having afforded the Union an opportunity to negotiate and bargain.''

[16] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as

ORDER

The complaint is dismissed.

provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.